

United States Department of the Interior

OFFICE OF THE SECRETARY Washington, DC 20240



APR 23 2009

Dear Tribal Leader:

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act (Act) of 2009, Public Law 111-5 (referred to as the Economic Stimulus Package). The Act provides a significant amount of funding for the benefit of Indian country. In addition, the Act allows tribes to issue \$400 million in "qualified tax bonds" (\$200 million of such bonds in 2009 and another \$200 million in 2010) to raise money for school construction. It is important to recognize that this bonding authorization is NOT an appropriation of Federal money, nor even a loan guarantee. The tribes will be responsible for paying their bonded obligations. The benefit to the tribes under the bonding provisions of the Act is that they can borrow money at a lower interest rate than they would have had to pay on non-tax-advantaged bonds (interest paid to the holders of the bonds is tax-exempt).

The Act directs that \$400 million in borrowing authority, "...be allocated by the Secretary of the Interior for purposes of the construction, rehabilitation, and repair of schools funded by the Bureau of Indian Affairs" (BIA). The Act allows such school construction bonds to be "qualified tax bonds" if "100 percent of the available project proceeds of such issue are to be used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue" and the issuer designates such bonds as qualified tax bonds for purposes of this section. For your convenience, the relevant provisions of the Act are enclosed.

The Secretary seeks input from the tribes on how to allocate the \$400 million in bonding authority among the tribes and establishing criteria to base such allocation decisions. It is reasonable to expect that there will be objective prerequisites as well as qualitative criteria. No decisions have been finalized, but it is likely that the Secretary will only approve tribal use of this bonding authority for work to be performed on education facilities listed as being in "poor condition" on the facilities condition index current at the time of the Secretary's decision.

The Secretary will only allocate bonding authority for projects that comply with building codes and construction requirements required by BIA for all bureau-funded education facility construction. Further, the Secretary will only approve bonding allocation for projects that were developed using BIA's Education Specifications, Space Criteria Allowances, and enrollment projection methodology, and which comply with current statutory or regulatory requirements regarding school grade structure, curriculum requirements and educational standards. Failure to comply will result in the loss of all Indian Affairs funding support for the functional and facilities operations and maintenance of the school.

The Act permits tribes, collectively, to issue up to \$2 billion in tax-exempt bonds for purposes of tribal economic development. Congress gave primary responsibility over the allocation of that borrowing authority to the Secretary of the Treasury, who is to allocate the benefit among the

tribes "in consultation with" the Secretary of the Interior. You should already have received a letter from the Secretary of the Treasury seeking your input on how to allocate that \$2 billion in borrowing authority.

Due to time constraints and the quickly-approaching construction season, we respectfully request that you submit any comments your tribe may have by May 8, 2009.

Please send your comments to: Mr. Jack Rever, Director, Office of Facilities, Environmental and Cultural Resources, 2051 Mercator Drive, Reston, Virginia 20191.

Finally, we respectfully encourage you to consider consulting with qualified legal counsel regarding these and other changes in the law under the Act that may benefit your tribe.

Sincerely,

George T. Skibine

Deputy Assistant Secretary

for Policy and Economic Development

Office of the Assistant Secretary – Indian Affairs

Enclosure

From 111 Pub. Law 5 (Economic Recovery Act of 2009):

PART III--TAX CREDIT BONDS FOR SCHOOLS Sec. 1521. QUALIFIED SCHOOL CONSTRUCTION BONDS.

[Title 26: IRS

Subtitle A: Income Tax

Chapter 1: Normal taxes and Surtaxes

Subchapter A: Determination of Tax Liability

Part IV: Credits Against Tax Subpart I: Qualified Tax Bonds]

(a) In General.--Subpart I of part IV of subchapter A of chapter 1 is amended by adding at the end the following new section:

"[26 U.S.C.] Sec. 54F. QUALIFIED SCHOOL CONSTRUCTION BONDS.

- "(a) Qualified School Construction Bond.--For purposes of this subchapter, the term 'qualified school construction bond' means any bond issued as part of an issue if--
- "(1) 100 percent of the available project proceeds of such issue are to be used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue,
- "(2) the bond is issued by a State or local government within the jurisdiction of which such school is located, and
 - "(3) the issuer designates such bond for purposes of this section.
- "(b) Limitation on Amount of Bonds Designated.--The maximum aggregate face amount of "(d) Allocation of Limitation.--
- "(4) Allocations for Indian schools.-- In addition to the amounts otherwise allocated under this subsection, \$ 200,000,000 for calendar year 2009, and \$ 200,000,000 for calendar year 2010, shall be allocated by the Secretary of the Interior for purposes of the construction, rehabilitation, and repair of schools funded by the Bureau of Indian Affairs. In the case of amounts allocated under the preceding sentence, Indian tribal governments (as defined in section 7701(a)(40)) shall be treated as qualified issuers for purposes of this subchapter.